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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,619	01/14/2004	Joseph John Michalowicz	OSTEONICS 3.0-480	4800

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LERNER, DAVID, LITTENBERG,
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600 SOUTH AVENUE WEST
WESTFIELD, NJ 07090

EXAMINER

MATTHEWS, WILLIAM H

ART UNIT	PAPER NUMBER
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3738

MAIL DATE	DELIVERY MODE
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08/10/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/757,619

Applicant(s)

MICHALOWICZ, JOSEPH JOHN

Examiner

William H. Matthews (Howie)

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11, 12, 23, 24, 26-38 and 40-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-12, 23-24, 26-38, 40-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 5-8-07 have been fully considered but they are not persuasive in view of the new grounds of rejection set forth below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 8,9,11,12, 23,24,26-31,33-38,40-45, 47-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Volk USPN 4608898.

Volk discloses a first portion (29) able to be fixed with respect to a bone surface, a second portion (20) rotatably coupled to the first portion at a pivot point (30) with a guide having guide surfaces (22, 23) and a means for positioning the first and second portions relative each other being an arm (27) with a hole receiving a bolt (pin) (36) and, being separate from the pivot point, the rotation of portion 1 relative to portion 2 maintains function if portion 1 is attached to bone. The first portion has tabs (38) with pins (screws) going through holes as shown in Figure 1 as a means for connection or fixing to bone and a recess between the washers of nut (33) and bolt (32), which are through a notch (34), in said recess, the arm is received where the bolt (32) is a screw mounted on the 1st and 2nd portions via washers and nuts (33) through the notch (34),

the notch also being an aperture in the first portion. Guideway (20) (2nd portion) has a slot, with planar surfaces, for receiving a cutting tool (saw 53) and can be used for the tibia or the angular movement allows for varying to any angle including varus/valgus angles. A manual angle adjustment element is within the notch (34) as nuts (33) and a screw (32) and is near the angle pointer (31) and is apart from the pivot point and may be loosened to allow for angle adjustment or tightened to lock portion 1 and 2 in relative position to each other. In reference to claim 37, the guide surfaces (23) may be regarded as the first and second ends of the second portion, where the pivot point of portion 1 and 2 is located on the first end of each portion and the angle adjustment engagement portion is located at the second end of the 1st portion. The axis of the resection surface being parallel with the pivot axis.

Volk lack the express written disclosure of the apertures in the first portion comprising vertical spaced rows of apertures. However, tab 31 of figure 1 is shown to be connected by fasteners extending through two apertures. Therefore it would have been obvious to one of ordinary skill in the art to modify the first portion, including tabs 38 connected by via single apertures, to include plural apertures as used for tab 31 of Volk, in order to provide adjustability or security to the connection.

Regarding the slot of the second portion, Applicant contends the slot is not configured for typical saws of the carpentry or orthopaedic arts. This is not persuasive because the slot as claimed is provided in the Volk device. The claim fails to provide structural limitations distinguishing the Volk slot from Applicant's slot.

Claims 7, 32, 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Volk (US Pat# 4608898) in view of Duffner (US Pat# 6796986) in further view of Goldin (US Pat# 4020929). Volk is explained supra, however Volk lacks a screw with a dimple to lock the arm in place. Duffner teaches a screw (175) to hold/lock pivoting arms of a guide in place (column 3, lines 35-45). Goldin teaches a screw with a dimple that slides into holes to lock a member in place (Figure 5 & 6). Goldin and Duffner also show that using a pin lock system is not a novel feature in the art. It would have been obvious to one of ordinary skill in the art at the time of the inventions to use the screw, as taught by Duffner & Goldin with the guide of Volk such that it provides the ability to lock the arm in place.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Matthews (Howie) whose telephone number is 571-272-4753. The examiner can normally be reached on Monday-Friday 10-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine M. McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/William H. Matthews/
Primary Examiner
Art Unit 3738